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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,798	12/12/2001	Valentin Kramer	31567.3	9144
5251	7590	12/06/2005	EXAMINER	
SHOOK, HARDY & BACON LLP INTELLECTUAL PROPERTY DEPARTMENT 2555 GRAND BLVD KANSAS CITY,, MO 64108-2613			CHANG, VICTOR S	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,798

Applicant(s)

KRAMER ET AL.

Examiner

Victor S. Chang

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-27,32-34 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27,32-34 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 10/27/2005. Applicants' amendments to the claims 19, 22, 32, cancellation of claims 35 and 36, and new claims 37-42 have been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, Applicants' analysis of Fig. 2 as a support for the amendments (dated 8/11/2005) to claims 19 and 32 appears to be persuasive, and the rejections in sections 4-6 in Office action mailed 8/31/2005 are withdrawn.

Claim Rejections - 35 USC § 112

4. Claims 19-27, 32-34 and 37-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

First, in claim 19, the new term "different molecular weight" is a relative term which render the claim indefinite, because the term "different molecular weight" is not defined by the claim, and the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably

apprised of the scope of the invention. Appropriate clarification in the next reply is requested.

Second, In view of Applicants statement "Referring to FIG. 2 ... first and second elongated nodes 5 (circled on the figure) create one group of discretely sized pores which are larger than a second group of smaller pores 6 created between shorter fibrils 7. A small "third" node 8 is interposed between the first and second nodes. On both the right and left in the figure ... this arrangement is repeated between the fourth and fifth nodes" (Remarks, page 7), the newly added terms "intermediate node" in independent claims 19 and 37 are indefinite and confusing. Clarification and/or correction to use consistent terminology are requested.

Rejections Based on Prior Art

5. Claims 19-22, 32-34 and 37-42 are rejected under 35 U.S.C. 102(a) as being anticipated by Edwin et al. (US 6039755), generally as set forth in section 7 of Office action dated 8/31/2005, together with the following additional reasoning.

First, for the purpose of clarity, the Examiner repeats the relied upon prior art as follows: Edwin's invention is directed to expanded microporous tubular polytetrafluoroethylene (ePTFE) grafts (abstract), which has a microstructure of nodes interconnected by fibrils, with the nodes being substantially perpendicular to the longitudinal axis of the tubular ePTFE material and the fibrils being oriented parallel to the longitudinal axis of the tubular ePTFE material, and radial expansion deforms the ePTFE microstructure by elongating the nodes (column 2, lines 42-49). Each of the

embodiments shown by Edwin in Figs. 5A-24D appears to read on the structural recitation of instant invention as claimed. Particularly, the embodiments shown in Figs. 18D, 21B and/or 21D are commensurate with the microstructure of the Fig. 2 of instant application.

For amended claim 19, regarding the newly added limitation "A PTFE article created by forming a mixture of a first resin and a second resin having a different molecular weight", the Examiner notes that since PTFE polymer inherently comprises a distribution of molecular weight, i.e., having different molecular weight, in the absence of evidence to the contrary, this limitation is anticipated. Additionally, the Examiner notes that, in the absence of structural or compositional limitation, Edwin's PTFE read on both the terms "first resin" and "second resin" as claimed.

Also, for amended claim 19, regarding the newly added limitation "an internodal arrangement ...said arrangement being repeated between a third node adjacent to said first node and a fourth node located adjacent said second node", the Examiner repeats that Edwin's embodiments shown in Figs. 18D, 21B and/or 21D are particularly commensurate with the microstructure of the Fig. 2 of instant application, which appears to be the basis of amended microstructure of claim 19.

Similarly, Edwin's embodiments shown in Figs. 18D, 21B and/or 21D read on the microstructures of newly amended independent claim 32 and newly added claim 37 as claimed. Further, similarly, in the absence of structural or compositional limitation, Edwin's PTFE read on both the terms "first material" and "second material" in claim 32 as claimed.

Finally, since newly added claims 38-42 claim the same scope of elements and limitations as claims 19-22 and 32-34, they are also rejected for the reasons as set forth above.

Response to Argument

6. Applicants' argument "Nothing like the repeated arrangement seen in FIGs. 2 and 4 ... can be found in any of the micrographs included in Edwin" (Remarks, page 10, first full paragraph) has been carefully considered, but is not persuasive. The Examiner repeats that Edwin's embodiments shown in Figs. 18D, 21B and/or 21D read on the microstructures of newly amended independent claims 19, 32 and new claim 37, and also are commensurate with the microstructure of the Figs. 2 and 4 of instant application, as set forth above.

With respect to Applicants' argument "Edwin uses only one PTFE resin at a time. It is, of course, fundamental to the creation of the article claimed that two resins be used." (Remarks, page 10), the Examiner notes that, first, in the absence of structural or compositional limitation, Edwin's PTFE read on both resins or materials as claimed, as set forth above. Second, the Examiner respectfully reminds Applicants that in the absence of factual support, attorney's argument cannot take place of evidence.

With respect to Applicants' argument "Edwin also reveals resulting structures are starkly different ... All these images show articles having uniform internodal distances between elongated nodes ... there is no mention of distinct groups of pores" (Remarks page 10, second full paragraph), the Examiner respectfully repeats again that Edwin's

embodiments shown in Figs. 18D, 21B and/or 21D read on the microstructures of newly amended independent claims 19, 32 and new claim 37, and also are commensurate with the microstructure of the Figs. 2 and 4 of instant application. In particular, these images show the same "distinct groups of pores", Applicants' argument to the contrary has no merit.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor S Chang
Examiner
Art Unit 1771

11/29/2005